



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

[Docket DARS-2018-0013]

RIN 0750-AJ49

Defense Federal Acquisition Regulation Supplement: Educational Service Agreements (DFARS Case 2017-D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove limiting language related to educational service agreements. This deletion will allow DoD to make agreements that permit payment for Masters of Laws degrees and other legal training programs, in accordance with applicable law, regulation, and policy.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS subpart 237.72, Educational Service Agreements, prescribes policies and procedures for acquiring educational services from schools, colleges, universities, or other educational institutions. An educational service agreement (ESA) is an ordering agreement under which the Government may acquire educational services. DFARS 237.7202(a) prohibits the use of ESAs as a contracting method for training in the legal profession, except when in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

The limitation at DFARS 237.7202(a) was established at a time when legal training was acquired only for the purpose of obtaining doctorate degrees for military judge advocates. DoD's need for legal training has evolved since the implementation of the text at DFARS 237.7202(a). Since 10 U.S.C. 2004 contains no prohibition against acquiring other training in the legal profession, this rule amends the DFARS to delete the language at DFARS 237.7202(a). Removal of this limitation will allow DoD to make agreements that permit payment for masters of laws degrees and other legal training needs, in accordance with applicable law, regulation, and policy.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is codified at Title 41 of the

United States Code (formerly known as the Office of Federal Procurement Policy Act). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it is simply allowing the contracting officer to use an ESA when acquiring training in the legal profession. Contracting officers can already use ESAs for the acquisition of training in any other profession. This requirement affects only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact existing provisions or clauses. There are no reporting, recordkeeping, or other compliance requirements in this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule relates to agency organization, management, or personnel.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this rule), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 237

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer

Defense Acquisition Regulations System.

Therefore, 48 CFR part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

1. The authority citation for part 237 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

237.7202 [Amended]

2. Amend section 237.7202 by removing paragraph (a) and redesignating paragraph (b) as an undesignated paragraph.

[FR Doc. 2018-07735 Filed: 4/12/2018 8:45 am; Publication Date: 4/13/2018]